IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWENTY THIRD DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 21104 of 2004

Between:

Balwant Singh, S/o Shri Prem Singh,
CISF Unit, NRSA, Balanagar, Hyderabad.

..... PETITIONER

AND

1 Union of India, Rep. by its Secretary,
Ministry of Home Affairs, New Delhi.
2 Group Commandant, Central Industrial Security Force Group Hqrs,
NRSA, Balanagar, Hyderabad - 78.
3 The Assistant Commandant, Central Industrial Security Force Unit, NRSA,
Balanagar, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to call for the records in the impugned proceedings No.V-15014/CISF/GHH/APPEAL/2004/1975 dated 6-5-2004 on the file of the second respondent and quash the same by issuing a Writ of Certiorari or any other appropriate Writ Order or direction and also declare all the consequential proceedings in pursuance of the impugned order as illegal and without jurisdiction.

Counsel for the Petitioner: MR.D.KRISHNA MURTHY

Counsel for the Respondents : MR.ARAJASHEKAR REDDY (SC FOR CG)

The Court at the admission stage, made the following :

HONOURABLE SRI JUSTICE K.C.BHANU

WRIT PETITION No. 21104 Of 2004

ORDER:

The present writ petition is filed to quash the impugned proceedings No.V-15014/CISF/GHH/APPEAL/2004/1975 dated 06-05-2004, issued by the 2nd respondent-Group Commandant.

2. Originally, the petitioner was charge sheeted to be dealt with under Rule 37 of Central Industrial Security Force (Ministry of Home Affairs) Rules, 2001 (for brevity 'Rules, 2001). A show cause notice was given, for which the petitioner gave a representation. Basing on the representation, considering the material available on record, a final order has been passed by the 3rd respondent-Assistant Commandant, Central Industrial Security Force on 20-02-2004 imposing a penalty of reduction to a lower stage in the time scale of pay from Rs.3350/- to Rs.3275/- for a period of one year without cumulative effect and not adversely affecting his pension. Being aggrieved by the said order, the writ petitioner filed an appeal before the 2nd respondent-Group Commandant. The 2nd respondent, while issuing his proceedings dated 06-05-2004 setting aside the impugned order passed by the 3rd respondent dated 20-02-2004 ordered to deal with the appellant under Rule 36 of the Rules, 2001, after affording all opportunities to defend the case to the writ petitioner.

Challenging the same, the present writ petition is filed.

3. The learned counsel appearing for the petitioner contended that the appellate authority, before ordering enquiry for major penalty under Rule 36 of the Rules, 2001, neither issued notice nor gave any opportunity to the petitioner and therefore, the principles of natural justice have been violated.

4. On the other hand, the learned Standing Counsel appearing for the respondents contended that the powers of the Commandant are enumerated under Rule 52 of the Rules, 2001 and the same does not contemplate the issuance of show cause notice and therefore, the order under challenge does not suffer from any incurable legal infirmity so as to call for interference by this Court.

5. The factual matrix is not in dispute. In all, the question that is required to be adjudicated in this writ petition, according to the submissions made by both the counsel is whether any notice is required to be given by the appellant authority before penalty is set aside under Rule 52 of the Rules, 2001.

6. The learned counsel appearing for the petitioner contended that the order under challenge would have its own civil consequences. Therefore, a notice is required to be given to the petitioner.

7. As seen from Rule 52 of Rules, 2001, the appellate authority has power to confirm, enhance, reduce or set aside the penalty and remit the case to the authority which imposed or enhanced the penalty, or to any other authority with certain directions, it may deem fit in the circumstances of the case.

8. Rule 52 of Rules, 2001 does not contemplate the issuance of a show cause notice before the appellate authority takes any decision. The proviso of Rule 52 of Rules, 2001 also makes it clear that the appellate authority has power to direct that an enquiry should be held in accordance with the Rule 36 of the Rules, 2001. The order under challenge is

completely in accordance with Rule 52 of Rules, 2001. It is also brought to the notice of this Court that in pursuance of this order dated 06-05-2004, an enquiry has been conducted and the Enquiry Officer already submitted a report and a show cause notice was already issued to the petitioner granting time till 24-11-2004 for submitting the explanation. The order under challenge does not lead to any civil consequences. The order passed by the Assistant Commandant was set aside and the Assistant Commandant was directed to proceed with the case as per Rule 36 of the Rules, 2001 after affording a reasonable opportunity to defend the case to the writ petitioner.

9. In the facts and circumstances of the case, I am of the considered view that before passing this impugned order, there is no need to issue any notice to the writ petitioner calling upon him to explain as the order will not have any civil consequences in the service of the petitioner as it is only directing the Enquiry Officer to conduct an enquiry after giving an opportunity and in my considered opinion, the order under challenge does not suffer from any incurable legal infirmity so as to call for interference by this Court.

10. It is brought to the notice of this Court by the learned counsel for the petitioner that the petitioner approached this Court after receipt of show cause notice and the time for giving explanation expires by 24-11-2004 and therefore, he seeks two weeks time from today i.e., on 23-11-2004 so as to submit further explanation to the show cause notice. The same is not opposed by the learned Standing Counsel for the respondents. In the fitness of things, two weeks time can be given to the petitioner to submit an explanation to the show cause notice dated 5/6-11-2004 and the same shall have to be considered uninfluenced by any observation made in this writ petition as well as in the appeal order.

11. With the above said observation, the writ petition is disposed of. In the circumstances, no order as to costs.

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November 23, 2004

Issue C.C. in three days.

B/o.

Kvr

To

1 The Secretary, Union of India,
Ministry of Home Affairs, New Delhi.
2 Group Commandant, Central Industrial Security Force Group Hqrs,
NRSA, Balanagar, Hyderabad - 78.
3 The Assistant Commandant, Central Industrial Security Force Unit, NRSA,
Balanagar, Hyderabad.

4 Two C.Ds.